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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/045,149	01/15/2002	Edgar Circenis	10016873-1	8859
22879 7590 12/04/2008 HEWLETT PACKARD COMPANY P O BOX 272400, 3404 E. HARMONY ROAD INTELLECTUAL PROPERTY ADMINISTRATION FORT COLLINS, CO 80527-2400				
EXAMINER WU, RUTAO				
ART UNIT 3628		PAPER NUMBER		
NOTIFICATION DATE 12/04/2008		DELIVERY MODE ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary

Application No.

10/045,149

Applicant(s)

CIRCENIS ET AL.

Examiner

ROB WU

Art Unit

3628

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 29 September 2008.
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 34, 35, 38, 45, 46, 53, 54, 60 and 61 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 45 and 46 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SF/08)
Paper No(s)/Mail Date _____
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____

DETAILED ACTION

1. In view of the decision by the Board of Appeals and Interferences on July 28, 2008 and the amendment filed on September 29 2008, PROSECUTION IS HEREBY REOPENED.

A Director of the Technology Unit has approved of reopening prosecution by signing below.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 45 and 46 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pub No. 2002/0083003 to Halliday et al in view of U.S. Pub No. 2002/0161717 to Kassan et al.

Referring to claim 45:

Halliday et al disclose

A software pay-per-use (PPU) system comprising:

A first computer having one or more PPU software products; [0053]

A metrics gathering tool associated with each of the one or more PPU software products, wherein each metrics gathering tool monitors and measures usage data for its associated one or more PPU software products; [0056]

A software metering agent residing on the first computer, wherein the software metering agent collects the measured usage data from each metrics gathering tool associated with the one or more PPU software products and collects usage data for all of the one or more PPU software products registered with the software metering agent on the first computer; [0056]

A utility metering appliance connected to a plurality of computers, including the first computer, through a network, wherein the utility metering appliance receives the collected usage data from the software metering agent residing on the first computer and other software metering agents residing on other computers connected to the utility metering appliance through the network; and [0051]

A usage collection and billing system, wherein the usage collection and billing system periodically receives the collected usage data from the utility metering appliance and processes the collected usage data to generate billing information for PPU software products on the plurality of computers connected to the utility metering appliance through the network. [0058]

However, Halliday et al does not expressly disclose that the usage data includes a number of input/output (I/O) transactions processed in a given time period.

Kassan et al disclose recording the number of input or output operations performed by a particular program-processes that execute on an Operating System

(OS) [0008], [0018], [0021] and the recorded information of number of input or output operations performed is then used for accounting purposes that translates into actual charge for a user. [0023]

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made for Halliday et al to include in its metrics gathering tool monitoring usage data for its associated one or more PPU software products the number of input or output operations performed as disclosed by Kassan et al since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one ordinary skill in the art would have recognized that the results of the combination were predictable.

Referring to claim 46:

Halliday et al disclose

A software pay-per-use (PPU) system comprising:

A first computer having one or more PPU software products; [0053]

A metrics gathering tool associated with each of the one or more PPU software products, wherein each metrics gathering tool monitors and measures usage data for its associated one or more PPU software products; [0056]

A software metering agent residing on the first computer, wherein the software metering agent collects the measured usage data from each metrics gathering tool associated with the one or more PPU software products and collects usage data for all

of the one or more PPU software products registered with the software metering agent on the first computer; [0056]

A utility metering appliance connected to a plurality of computers, including the first computer, through a network, wherein the utility metering appliance receives the collected usage data from the software metering agent residing on the first computer and other software metering agents residing on other computers connected to the utility metering appliance through the network; and [0051]

A usage collection and billing system, wherein the usage collection and billing system periodically receives the collected usage data from the utility metering appliance and processes the collected usage data to generate billing information for PPU software products on the plurality of computers connected to the utility metering appliance through the network. [0058]

However, Halliday et al does not expressly disclose that the usage data is based on one or more of the following: number of users of the system, number of users of a given type, software license level, number of transactions processed per minute, total number of transactions processed, number of files created, sizes of files created, number of keystrokes processed, number of times a specific software product features has been accessed and number of computers on the system using one or more of the PPU software products.

Kassan et al disclose recording the libraries, files or databases used by a particular program-processes and the number of input or output operations performed by a particular program-processes that execute on an Operating System (OS) [0008],

[0018], [0021]. The recorded information of number of input or output operations performed is then used for accounting purposes that translates into actual charge for a user. [0023]

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made for Halliday et al to include in its metrics gathering tool monitoring usage data for its associated one or more PPU software products the libraries, files or databases used and number of input or output operations performed as disclosed by Kassan et al since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one ordinary skill in the art would have recognized that the results of the combination were predictable.

Allowable Subject Matter

4. Claims 34, 35, 38, 53, 54, 60 and 61 are allowed.
5. The following is an examiner's statement of reasons for allowance:

The closes prior art of record is U.S. Pub No. 2002/0083003 to Halliday et al
Halliday et al disclose a system and method of monitoring time and usage of client application or client application feature usage.

As per claim 34, in accordance with the decision by the Board of Appeals and Interferences, the closest prior art of record fails to teach or suggest a registry for identifying all of the one or more PPU software products registered with the software metering agent on the first computer, wherein the registry includes identifiers for all of

the one or more PPU software products registered with the software metering agent on the first computer and a pathname for each software metering agent associated with each of the one or more PPU software products. Claim 35 depend upon claim 34 and have all the limitations of claim 34 and are allowable for the same reason.

As per claim 38, in accordance with the decision by the Board of Appeals and Interferences, the closest prior art of record fails to teach or suggest wherein the utility metering appliance is a software program residing on each of the plurality of computers.

As per claim 53, in accordance with the decision by the Board of Appeals and Interferences, the closest prior art of record fails to teach or suggest identifying all of the one or more PPU software products registered with the software metering agent on the first computer by a registry, wherein the registry includes identifiers for all of the one or more PPU software products registered with the software metering agent on the first computer and a pathname for each software metering agent associated with each of the one or more PPU software products. Claim 54 depend upon claim 53 and have all the limitations of claim 53 and are allowable for the same reason.

As per claim 60, in accordance with the decision by the Board of Appeals and Interferences, the closest prior art of record fails to teach or suggest identifying all of the one or more PPU software products registered with the software metering agent on the first computer by a registry, wherein the registry includes identifiers for all of the one or more PPU software products registered with the software metering agent on the first computer and a pathname for each software metering agent associated with each of the

one or more PPU software products. Claim 61 depend upon claim 60 and have all the limitations of claim 60 and are allowable for the same reason.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ROB WU whose telephone number is (571)272-3136. The examiner can normally be reached on Mon-Fri 8-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Hayes can be reached on (571)272-6708. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/R. W./
Examiner, Art Unit 3628

/JOHN W HAYES/
Supervisory Patent Examiner, Art Unit 3628

/Wynn W. Coggins/
Director, TC 3600